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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,157	09/19/2003	Kenneth W. Whitley	P-5655/5	7091

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DAVID W. HIGHET, VP AND CHIEF IP COUNSEL  
BECTON, DICKINSON AND COMPANY  
1 BECTON DRIVE, MC 110  
FRANKLIN LAKES, NJ 07417-1880

EXAMINER

BOWERS, NATHAN ANDREW

ART UNIT PAPER NUMBER

1744

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/666,157	<b>Applicant(s)</b> WHITLEY, KENNETH W.	
	<b>Examiner</b> Nathan A. Bowers	<b>Art Unit</b> 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>031006</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1) Claims 1, 2 and 4-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Pedmo (US 6585123).

With respect to claims 1, 2, 4, and 5, Pedmo discloses a container comprising an elongate cylindrical wall having a closed bottom end and an opposed projecting neck portion defining a liquid opening. This is disclosed in column 2, lines 15-38. The closed bottom end includes an inwardly directed recessed portion for accommodating a neck portion end of an adjacent stacked similar container. This is shown in Figure 4 and disclosed in column 3, lines 24-25. The recessed portion includes a planar surface having at least one rib (Figure 5:34) extending therefrom for defining a space between the neck portion of the similar container and the bottom of the original container. The container is disclosed generally as a bottle, but could inherently be used to provide a controlled environment for cell growth culturing. The ribs are integral with the

Art Unit: 1744

planar surface, and the recessed portion further includes side walls. Pedmo discloses in column 3, lines 24-25 that the bottles are stackable.

With respect to claims 6 and 7, Pedmo discloses the container in claim 5, wherein a plurality of ribs (Figure 5:34) is provided, and the ribs are equally spaced about the longitudinal axis of the container. This is disclosed in column 2, lines 46-58.

With respect to claims 8 and 9, Pedmo discloses the container in claim 1, wherein the recessed portion is generally frustoconical in shape, and the neck includes integral external screw threads for receiving an internally screw threaded cap thereon. This is apparent from the Figures.

2) Claims 1, 2, 4, 5, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Witt (US 4810652).

With respect to claims 1, 2, 4, and 5, Witt discloses a stackable roller bottle for cell growth culturing comprising an elongate cylindrical wall having a closed bottom end (Figure 1:30) and an opposed projecting neck portion (Figure 1:15) defining a liquid opening. The closed bottom end includes an inwardly directed recessed portion (Figure 1:32) for accommodating a neck portion end of an adjacent stacked similar container. This is disclosed in column 3, lines 35-68. Furthermore, the recessed portion includes a planar surface having at least one rib (Figure 1:38) extending therefrom for defining a space between the neck portion of one container and the planar surface of another. It is apparent from

Art Unit: 1744

the Figures that the rib is integral with the planar surface, and that the recessed portion includes side walls.

With respect to claims 9, 10 and 12, Witt discloses the apparatus in claim 1 wherein the neck includes integral external screw threads (Figure 1:24) for receiving an internally screw threaded cap (Figure 1:20). The cap has a top surface and an annular outer skirt extending from the top surface to a bottom stop ledge.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3) Claims 1, 4, 5, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over deLarosiére (US 4416373) in view of Der Yuen (US 2641374).

With respect to claim 1, deLarosiére discloses a container (Figure 2:4) comprising an elongate cylindrical wall having a closed bottom end, and an opposed projecting neck portion end defining a liquid opening. When combined with a base cup (Figure 2:8), the container comprises an inwardly directed recessed portion for accommodating a neck portion end of an adjacent stacked similar container. The recessed portion includes at least one rib (Figure 5:30) extending therefrom for defining a space between the neck portion of the similar

Art Unit: 1744

container and the bottom of the original container. This is disclosed in column 6, lines 21-65. The container is disclosed as a beverage bottle, but could intrinsically be used to provide a controlled environment for cell growth culturing. deLarosiére, however, discloses that the recessed portion includes a curved surface rather than a planar surface.

Der Yuen discloses a container (Figure 1:A) having a closed bottom end and an opposed projecting neck (Figure 1:B) defining a liquid opening. The closed bottom end includes an inwardly directed recessed portion (Figure 2:18) for accommodating a neck portion end of an adjacent stacked similar container (see Figure 3). The recessed portion includes a planar surface.

deLarosiére and Der Yuen are analogous art because they are from the same field of endeavor regarding containers are stackable.

At the time of the invention, it would have been obvious to include a planar surface within the recessed portion of the container disclosed by deLarosiére. A planar surface would have been desirable because it would have allowed one to more easily attach ribs to the bottom of the container. A planar surface would help insure that the neck portion of the additional container rests flush on each of the provided ribs, and is not tilted. Differences in shape do not cause a claimed invention to be patentably distinct from the prior art, especially when the function of the device is not changed in an unexpected manner. See *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) and MPEP 2144.04.

Art Unit: 1744

With respect to claim 4, deLarosièrè and Der Yuen disclose the apparatus set forth in claim 1 as set forth in the 35 U.S.C. 103 rejection above. In addition, deLarosièrè teaches in Figure 5 and column 6, lines 29-32 that the rib is integral with the planar surface.

With respect to claim 5, deLarosièrè and Der Yuen disclose the apparatus set forth in claim 1 as set forth in the 35 U.S.C. 103 rejection above. In addition, deLarosièrè teaches in column 6, lines 47-65 that a plurality of supports (Figure 5:26) are provided with a plurality of side walls (Figure 5:32) that are used to guide the neck of one container to a seated position on the ribs of another container. Der Yuen also discloses a recessed portion with sidewalls in Figure 3.

With respect to claim 8, deLarosièrè and Der Yuen disclose the apparatus set forth in claim 1 as set forth in the 35 U.S.C. 103 rejection above. In addition, it is apparent from Figure 5 that the recessed portion of deLarosièrè's device defined by side walls (Figure 5:32) is generally frustoconical in shape.

With respect to claim 9, deLarosièrè and Der Yuen disclose the apparatus set forth in claim 1 as set forth in the 35 U.S.C. 103 rejection above. In addition, deLarosièrè's invention comprises a neck that includes integral external screw threads for receiving an internally screw threaded cap thereon. The bottle closure (Figure 1:10) is clearly depicted in the Figures as a screw threaded cap.

Art Unit: 1744

4) Claims 2 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Witt (US 4810652) as applied to claims 1 and 10, and further in view of Kayal (US 5695987).

Witt discloses the bottle assembly set forth in claims 1 and 10 as set forth in the 35 U.S.C. 102 rejections above, however does not expressly disclose that the space between the two coupled containers permits gases to enter into and out of the liquid opening of the adjacent stacked container, or that the cap further includes a central orifice with an affixed gas permeable membrane.

Kayal discloses a cell culturing roller bottle (Figure 1:12) comprising a liquid opening that is covered by a screw cap. The cap includes a central orifice covered by a gas permeable membrane (Figure 3:56), and allows gases to enter into and out of the liquid opening. This is disclosed in column 1, lines 54-67.

Witt and Kayal are analogous art because they are from the same field of endeavor regarding the use of capped bottles to contain a fluid.

At the time of the invention, it would have been obvious to alter the invention disclosed by Witt in order to allow the space between the two coupled containers to permit the entry of gases into the liquid opening of the adjacent, bottom container. The addition of gases to a culturing vessel is often essential because many microorganisms require certain gases such as oxygen to grow. Kayal discloses in column 4, lines 6-17 that bottle caps comprising gas permeable membranes are an effective way to deliver critical gases to the culturing cells while preventing the passage of undesirable microorganisms and contaminants.



Art Unit: 1744

5) Claims 6, 7, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Witt (US 4810652) as applied to claim 12, and further in view of Pedmo (US 6585123).

Witt discloses the roller bottle assembly set forth in claims 5 and 12 as set forth in the 35 U.S.C. 102 rejections above, however does not disclose that a plurality of ribs are provided that are equally spaced apart and radiate from a point proximal to the longitudinal axis of the container.

Pedmo discloses a bottle comprising an inwardly directed recessed portion at the bottom of the bottle. Ribs (Figure 5:34) are provided, which radiate from a point proximal to the longitudinal axis of the container toward the side wall of the recessed portion. A plurality of equally spaced apart ribs is provided. This is disclosed in column 2, lines 46-58.

Witt and Pedmo are analogous art because they are from the same field of endeavor regarding the use of capped bottles to contain a fluid.

At the time of the invention, it would have been obvious to utilize a plurality of equally spaced apart, outwardly radiating ribs in the roller bottle assembly disclosed by Witt. In column 1, lines 11-20, Pedmo discloses that ribs constructed in this manner are beneficial because they improve the strength properties of the bottles, thus enabling the bottles to withstand damage when physically struck. Pedmo additionally states that a plurality of ribs that radiate from the center of the bottle help the bottles withstand deformation during heat applications. Since incubation is sometimes completed under high temperatures,

Art Unit: 1744

the utilization of ribs of this nature would be beneficial in the roller bottle assembly disclosed by Witt.

### ***Response to Arguments***

Please note the rejections of claim 1 made with regard to Pedmo and the combination of deLarosiére and Der Yuen. It is believed that these references meet the claimed limitations set forth in claim 1, including limitations regarding the stackable nature of the bottles. The previous Office Action (1/23/06) did not use these references to reject the previous claim 3 (now incorporated into claim 1), however this was due to a simple clerical error by the Examiner. As noted in the rejections of the current Office Action, Pedmo and deLarosiére both disclose stackable bottles.

Applicant's arguments, see pages 6-8, filed 25 April 2006, with respect to the rejection(s) of claim(s) 1 involving Mussi and Land have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Witt.

As noted in the newly made 35 U.S.C. 102 rejection above, it is believed that Witt discloses a stackable roller bottle comprising a recessed portion that includes a planar surface having at least one rib.

Art Unit: 1744

**Conclusion**

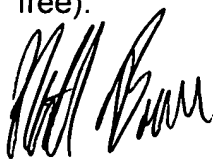
This is a non-final rejection.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan A. Bowers whose telephone number is (571) 272-8613. The examiner can normally be reached on Monday-Friday 8 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NAB



GLADYS JP CORCORAN  
SUPERVISORY PATENT EXAMINER